

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GUY A. WOJTANEK

Appeal No. 95-2405
Application 07/969,663¹

HEARD: Jan. 15, 1998

Before KRASS, LEE, and CARMICHAEL, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 3 through 6, 8 and 9. Claims 1 and 2 have been canceled and claim 7 has been indicated by the examiner as being allowable.

The invention pertains to a windshield wiper/washer switch, the details of which are made clear from an analysis of independent claim 8, the only independent claim before us on this appeal.

Claim 8 reads as follows:

8. A wipe/wash switch comprising:

(a) housing means including connector terminal means adapted for circuit connection thereto;

(b) collar means mounted for sliding movement on said housing means between a first and second position;

(c) rocker means mounted for pivotal movement on said collar means by a user between a center "OFF" and clockwise "ON" and counter-clockwise "ON" position;

(d) first shorting contact means mounted on said rocker means for movement therewith;

(e) a first set of stationary contact strips disposed on said housing means, said first shorting contact means operative with said collar means in either of said first and second positions for sliding contact with said first set of strips to complete a first circuit upon said counter-clockwise pivotal movement of said rocker means, and operative to complete a second circuit upon said clockwise pivotal movement of said rocker means;

(f) second shorting contact means disposed on said rocker means for movement therewith;

(g) a second set of stationary contact strip means disposed on said housing means for sliding contact by said second shorting contact means such that upon movement of said collar means to said second position, said second shorting contact means is operative with said second set of contact strip means to complete a third circuit when said rocker means is in either of said clockwise and counter-clockwise pivotal positions; and,

(h) means connected [sic, connecting?] said first and second contact strip means with said connector terminal means.

The examiner relies on the following references:

Stevenson	2,672,531	Mar. 16, 1954
Roeser	3,772,484	Nov. 13, 1973
Kokubu	5,099,091	Mar. 24, 1992

Claims 3 through 6, 8 and 9 stand rejected under

¹ Application for patent filed October 30, 1992.

35 U.S.C. ' 103. As evidence of obviousness, the examiner cites Stevenson and Roeser with regard to claims 3, 5, 6, 8 and 9, adding Kokubu to this combination with regard to claim 4.²

Reference is made to the briefs and answers for the respective positions of appellant and the examiner.

OPINION

At the outset, we note that, in the answers, the examiner refers back to a previous office action, paper number 7, for an explanation of the rejection of claims 3, 5, 6, 8 and 9. However, when reference is made to that previous office action, that action refers us back further to paper number 5 for an explanation of the rejection. This is improper under Manual of Patent Examining Procedures ' 1208 (6th ed., rev. 3, July 1997) which provides for incorporation by reference to only "a single prior action." Violations of this rule in the future may result in the application being remanded to the examiner for compliance with the rule.

We now turn to the rejection of independent claim 8.

The examiner's rationale for the rejection of claim 8 is that Stevenson discloses a pivot/push switch as claimed but for the rocker being pivotally mounted to a collar. However, the examiner cites Roeser for the teaching of a switch wherein

² The rejection of claim 4 based on the Stevenson, Roeser and Kokubu references is a new ground of rejection presented for the

the rocker is mounted to the collar such that during pivotal motion of the rocker, a first circuit is completed but during a sliding action of the collar, a second circuit is completed. The examiner concludes that it would have been obvious to provide a separate collar in which the rocker pivots "because the separate collar would ensure that the sliding movement to actuate the second circuit would not accidentally occur during a pivotal movement of the rocker" [Paper No. 5, page 3].

The examiner's rationale does not appear to be unreasonable to us and, since the examiner has identified what elements of the prior art are considered to correspond to the claimed invention, where the differences lie, and why the artisan would have found the claimed subject matter as a whole obvious in view of the prior art, the examiner appears to have made out a prima facie case of obviousness.

The burden has been shifted to appellant to establish, by argument and/or objective evidence, why the examiner's finding of obviousness is erroneous.

At page 6 of the principal brief, appellant merely sets forth what is recited in claim 8 and then sets forth a single argument, to wit,

Claim 8 has the rocker pivotally mounted on the slider such that the shorting contacts mounted on the rocker are away from the pivot point to effect sliding or wiping action. Stevenson relies on pivoting contact on the housing to provide his electrical common function

first time in the examiner's principal answer.

for switching, this is obviated by Applicant's claimed invention.

The Roeser reference...contains no teaching of moveable [sic] contact means mounted on the rocker means...

Appellant's argument is unpersuasive. First, it is unclear exactly what language in claim 8 is being relied on for the argument that the shorting contacts on the rocker "are away from the pivot point." Second, while appellant argues that Stevenson relies on the pivoting contact to provide "his electrical common function for switching," we fail to find any language in claim 8 which precludes any such "electrical common function for switching."

With regard to the Roeser reference, it is unpersuasive for appellant to argue that the reference "contains no teaching of moveable [sic] contact means mounted on the rocker means" because the examiner relies on Stevenson, not Roeser, for this teaching. Roeser is relied on by the examiner merely to show that it was known to use the pivotal motion of a rocker with reference to a collar to operate switches while simultaneously operating other switches with a downward or pushing motion of the collar.

With regard to claim 4, appellant does not argue that the application of Kokubu for the teaching of a light pipe was improper; only that Kokubu does not provide for the alleged deficiencies of Stevenson and Roeser. However, since appellant's previous argument with regard to the primary references was

deemed unpersuasive, for the reasons supra, this argument, too, is unpersuasive.

While we understand appellant's disclosed invention to differ somewhat from that disclosed by the applied references, and we do not say that the subject matter of instant claim 8 cannot be distinguished from the prior art as represented by Stevenson and Roeser, we simply note that appellant has not so distinguished the claim language. Further, appellant does not take issue with the appropriateness of the examiner's combination of the references and motivation therefor.

We have responded to all of appellant's arguments. Arguments not made are waived. In re Kroekel, 803 F.2d 705, 709, 231 USPQ 640, 642-43 (Fed. Cir. 1986). Accordingly, since appellant has failed to convince us of any error in the examiner's rejection of claims 3, 5, 6, 8 and 9 under 35 U.S.C. ' 103, we will sustain the rejection.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR

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' 1.136 (a).

AFFIRMED

Errol A. Krass)	
Administrative Patent Judge)	
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Jameson Lee)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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)	
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